

IN THE MATTER OF : BEFORE THE
SWEET PEA FOODS, INC., T/A : HOWARD COUNTY
MCDONALD'S : BOARD OF APPEALS
Petitioner : BA Case No. 10-002S

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DECISION AND ORDER

The Howard County Board of Appeals (the "Board") convened on July 7 and 12, 2011, to hear the petition of Sweet Pea Foods, Inc., t/a McDonalds's, to erect two signs in a B-2 (Business: General) Zoning District, in accordance with Section 3.513 of the Howard County Sign Code (the "Sign Code"). For Sign A, the Petitioner requests a variance to erect a 9'11" (H) x 10' (W), 99.2 aggregate square foot pole sign 40 feet from grade to the top of the sign in total height, with a 14-foot setback from the US 1 right-of-way (ROW) rather than the 99'2" foot-setback required in relation to the aggregate sign area and the 80-foot setback required in relation to the sign height. For Sign B, which would be attached beneath Sign A, the Petitioner requests a variance to erect a 3' (H) x 8" (W), 24 aggregate square foot changeable text sign 13 feet high from grade to the top of the sign.

All Board members were present and Chairperson James Walsh presided at the hearing and deliberation of the petition. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

The Petitioner was represented by counsel, Thomas M. Meachum. John Eidberger testified in support of the petition. Raymond Miller and Cathy Hudson testified in opposition to the petition as the representatives of the Greater ElkrIDGE Community Association (GECA). Howard Johnson testified individually in opposition to the petition.

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Zoning Regulations. The Board members indicated that they had viewed the property as required by the Zoning Regulations.

This case was conducted in accordance with Section 2.209 of the Board's Rules of Procedure. Pursuant to the Board's Rules, the following items were incorporated into the record by reference:

1. The appropriate provisions of the Howard County Charter;
2. The appropriate provisions of the Howard County Code;
3. The recommendation of denial of the Department of Inspections, Licenses and Permits Technical Staff Report ("TSR") dated November 19, 2010;
4. The General Plan for Howard County;
5. The General Plan of Highways; and
6. The Petition and plan submitted by the Petitioner.

The Petitioner submitted the following exhibits in support of the petition:

Exhibit # 1 - Letter dated June 30, 2010 from DILP

Exhibit # 2 - Letter dated July 20, 2010 from Helbing Lipp Ltd. Architect Engineers

Exhibit # 3(a-q) - 17 photographs along US 1

Exhibit # 4 - Route 1 Manual – July 2009

Exhibit # 5 - Route 1 Corridor Revitalization Study – June 26, 2001

The Board accepted into evidence the following exhibit on behalf of the Opponents:

Exhibit # 1 - Resolution and Statement from the Greater Elkridge Community Association authorizing Ray Miller to submit testimony on their behalf.

FINDINGS OF FACT

Based upon the testimony and exhibits presented at the hearing, the Board makes the following Findings of Fact:

1. The B-2 zoned subject property is located in the 1st Election District. It is referenced as Tax Map 38, Parcel 127 and is also known as 6225 Washington Boulevard (the "Property"). The 2.16-acre Property is generally square in shape.

2. The Requested Sign Variances. Sign A is 9'11" (H) x (W), 99.2 aggregate square foot pole sign 40 feet from grade to the top of the sign in total height, with a 14-foot setback from US 1 right-of-way (ROW) rather than the 99'2" foot-setback required in relation to the aggregate sign area and the 80-foot setback required in relation to the sign height. According to the sign variance plan, the sign frame would be topped by a 6'3" (H) McDonald's golden arch. The 3'8" high red sign frame would contain the word "McDonald's" in white lettering. According to the variance petition Sign A appears to be a standard corporate freestanding pole sign which was approved for another McDonald's in Jessup, Maryland in BA 09-001S. Sign B, which would be attached beneath Sign A, is a 3' (H) x 8' (W), 24 aggregate square foot, changeable text yellow sign 13 feet high from grade to the top of the sign.

3. The existing McDonald's structure is positioned horizontal to US 1 and is set back from the ultimate ROW. US 1 in the area of the site drops gradually in elevation from a high point south of the Exec Motel. The Site appears to have been graded and the Burger King Restaurant sharing the common southwesterly lot line with McDonald's sits at a higher elevation, about four feet according to the Department of Inspections, Licenses and Permits technical staff report (TSR). The Burger King structure also sits closer to US 1 and partially blocks the view of the McDonald's structure.

There is an existing McDonald's 15' tall sign in the Site's southwestern corner. Although it is visible to southbound motorists, northbound motorists cannot view it until close to the McDonald's site owing to a large evergreen tree on the Burger King property.

The east side section of US 1 is populated by a continuous line of utility poles. There are multiple clusters of landscaping trees on the properties north and south of the Property in the same general area as the utility poles.

4. The B-2 zoned Property to the northeast is improved by a one-story commercial structure housing Fuentes Brothers Auto Sales. To the east, the R-12 (Residential: Single Family) zoned property (5934 Bonnie View Lane) is improved by a single-family dwelling. The adjoining property to the southwest is the site of a Burger King restaurant. Across US 1 to the west is the site of Elkridge Crossing, a garage townhome and condominium subdivision.

5. US 1 is an intermediate arterial highway with a 45 MPH speed limit in the area of the subject property.

6. John Eidberger testified to being a construction manager for McDonald's and that he reviews sites for signs, driveways and other matters. He stated that the McDonald's building was reconstructed in 2009 after a fire. Mr. Eidberger stated that the proposed 40-foot height for Sign A is needed because cars traveling northbound on US 1 cannot see the business due to obstructions, namely, power lines, trees and the Burger King building. Mr. Eidberger opined that the a sign 40 feet above the trees and the Burger King building would be partially visible to northbound motorists. Mr. Eidberger explained that McDonald's restaurants depend on impulse customers for business and that the signage would allow drivers ample time for turning. Mr. Eidberger stated that a monument sign would not work at the site because it would be obstructed from view. While Mr. Eidberger presented road sight measurements –

proposed 40 foot high sign viewed from various road distances – he did not present road sight measurements (photos) for a monument sign placed at the 0' (zero) foot setback from the US ROW.

7. Ray Miller testified in opposition to the petition on behalf of The Greater Elkridge Community Association (“GECA”). Mr. Miller stated that the requested variance is in direct conflict not only with the existing sign code, but also with the goal of GECA which is to promote and enhance quality of life in the First Election district. Mr. Miller stated that the proposed sign will contribute to “sign clutter” along the Route 1 corridor and is not in compliance with the Route 1 Manual, a guide to revitalizing the aging Route 1 corridor. Mr. Miller opined that the proposed sign does not comport with the Route 1 Manual, especially its requirements and recommendations for freestanding signs along the Route 1 corridor. Of great concern to GECA, said Miller, was about the sign’s height setting an inappropriate precedent along US 1. Mr. Miller suggested a monument sign, or one that is affixed to the ground and close to the curb as an alternative.

8. The TSR found that trees and utility poles along US 1 and the Burger King tree blocks the northbound motorists’ view of the proposed 40-foot sign at the proposed location until they are about 100 feet from the McDonald’s entrance. The TSR consequently concluded that the sign at the proposed 40-foot height is not the minimum that would afford relief, because the sign would not be high enough to be visible. The TSR further concluded that a ground mounted McDonald’s sign located at a suggested 0’ (zero) foot setback from the US ROW would be more visible than the proposed 40-foot high sign.

9. Howard Johnson testified in opposition to the petition and stated that he can see the brightly lit McDonald’s from his home across US 1. Mr. Johnson stated that a 40’ high sign on the McDonalds’ site is an extreme request by the Petitioner.

10. Cathy Hudson testified in opposition to the petition and stated that the Elkridge community will be the loser in a “pissing contest” between McDonald’s and the neighboring Burger King which planted a tree that obscures the existing McDonald’s sign. Other concerns expressed by Ms. Hudson were that this petition, if granted, would contribute to the “visual clutter” in the area and set a precedent for other businesses seeking sign variances along US 1. Ms. Hudson also stated that the proposed sign did not comply with the Route 1 Manual.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board makes the following Conclusions of Law:

1. The Site has frontage along US 1, which has a dependency on nonlocal use. This condition leads to practical difficulty and unnecessary hardship in complying strictly with the setback requirements of the Sign Code, in accordance with Section 3.513.(b)(1).

2. The Board concludes that there are obstructions, such as the McDonald’s building being setback further than the Burger King Restaurant to the south, the Property sitting at a lower elevation than adjoining properties, as well as utility poles and trees which would interfere with the visibility of the proposed sign and result in practical difficulties in complying strictly with the provisions of the Sign Code, in accordance with Section 3.513(b)(2).

3. There are no historical, architectural or aesthetic characteristics of the Property to be considered under Section 3.513(b)(3).

4. The variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition, as required by Section 3.513(b)(4).

5. The Board concludes that the Petitioner has not sustained its burden of production and persuasion that the requested variances are the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of the Sign Code in accordance with Section 3.513(b)(5). The Board concludes that although the Petitioner contends that a monument sign would not be visible to northbound traffic on US 1 that the Petitioner did not present evidence supporting its claim. Furthermore, the Board concludes that a 40 foot tall freestanding sign would be not be reasonable and is excessive in size since it would tower above those neighboring businesses with signage in the area like Tip-Top Motel and Burger King.

6. The Board concludes that the practical difficulties are a result of unique Property conditions, vicinal obstructions, and highway conditions. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

ORDER

Based upon the foregoing, it is this 10th day of NOVEMBER, 2011, by the Howard County Board of Appeals, **ORDERED:**

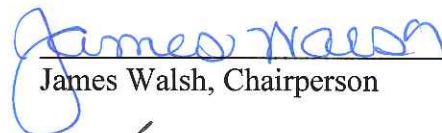
1. That the petition of Sweet Pea Foods, Inc., t/a McDonald's, for a variance to erect a 9'11" (H) x 10' (W), 99.2 aggregate square foot pole sign 40 feet from grade to the top of the sign in total height, with a 14-foot setback from the US 1 right-of-way rather than the 99'2" foot-setback required in relation to the aggregate sign area and the 80-foot setback required in relation to the sign height is hereby **DENIED**.

2. That the petition of Sweet Pea Foods, Inc., t/a McDonalds's, for a variance to erect a 3' (H) x 8' (W), 24 aggregate square foot changeable text sign 13 feet high from grade to the top of the sign on the same pole as the above sign is hereby **DENIED**.

ATTEST:

HOWARD COUNTY BOARD OF APPEALS


Alison Mathieson, Secretary

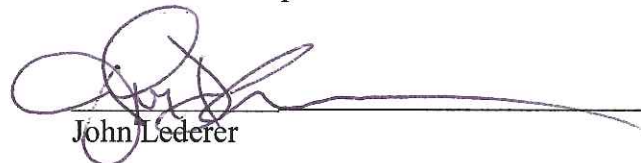

James Walsh, Chairperson

PREPARED BY:
HOWARD COUNTY OFFICE OF LAW
MARGARET ANN NOLAN
COUNTY SOLICITOR


Henry Eagles, Vice-Chairperson

Dissent
Maurice M. Simpkins


Barry Sanders
Assistant County Solicitor


John Lederer

Dissent
James Howard